IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ROME DIVISION

KAREN ARMSTRONG,	:	
	:	
Plaintiff,	:	
	:	Civil Action No.
vs.	:	4:13-CV-00050-HLM
	:	
FLOYD COUNTY, GEORGIA, et al.,	:	
	:	
Defendants.	:	

PLAINTIFF'S BRIEF IN OPPOSITION TO DEFENDANT FLOYD COUNTY, GEORGIA'S MOTION FOR JUDGMENT ON THE PLEADINGS

COMES NOW the Plaintiff, Karen Armstrong ("Plaintiff" or "Armstrong") and files this *Plaintiff's Brief in Opposition to Defendant Floyd County, Georgia's Motion for Judgment on the Pleadings*, as follows:

I. PROCEDURAL POSTURE

Plaintiff filed her original Complaint (Doc. 1) on March 1, 2013. Defendant Floyd County, Georgia, filed an Answer (Doc. 17) on April 9, 2013.On May 10, 2013, this Court entered an Order (Doc. 28) granting a Motion to Dismiss filed by Defendants City of Rome, Georgia, Rome-Floyd Parks and Recreation Authority, and Richard Garland, with respect to those Defendants, without prejudice. This Court afforded Plaintiff fourteen (14) days within which to file a Second Amended Complaint to address various concerns laid out in its May 10 Order. (Id. at

25). Accordingly, Plaintiff filed her Second Amended Complaint (Doc. 29) on or about May 13, 2013. That Second Amended Complaint clarified which factual allegations related to which legal claims, and which legal claims related to which Defendants.

On or about May 27, 2013, Defendant Floyd County filed an Answer to Plaintiff's Second Amended Complaint (Doc. 32). On May 28, 2013, Floyd County filed the instant Motion for Judgment on the Pleadings. (Docs. 35 and 35-1).

II. STATEMENT OF FACTS

The facts alleged in the Second Amended Complaint were accurately outlined by the Court in its May 10, 2013 Order (although the numbering and organization of those facts have changed). Plaintiff hereby incorporates, by reference, the Statement of Facts as outlined in Plaintiff's Second Amended Complaint (Doc. 29) and in this Court in its' May 10, 2013 Order (Doc. 28 at 7-18). Further, Defendant Floyd County has accurately stated the facts in support of the instant Motion. Plaintiff will cite in the argument section the facts that appropriate apply to each legal argument.

III. LEGAL ARGUMENT AND CITATION TO AUTHORITY

A. The 12(c) Standard of Review

Defendant's statement of the 12(c) standard of review is correct. "After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings." Fed. R. Civ. P. 12(c). After a defendant has filed an answer to the complaint in which the defense of failure to state a claim is raised and the defendant wishes for the Court to pass on the sufficiency of that defense, the proper procedure is to move the Court for judgment on the pleadings pursuant to Fed. R. Civ. P. 12(c). Byrne v. Nezhat, 261 F.3d 1075, 1096 n.46 (11th Cir. 2001). In reviewing a motion for judgment on the pleadings, this Court is to accept the facts alleged in the complaint as true and view them in the light most favorable to the nonmoving party. Cannon v. City of West Palm Beach, 250 F.3d 1299, 1301 (11th Cir. 2001). "Judgment on the pleadings under Rule 12(c) is appropriate when there are no material facts in dispute, and judgment may be rendered by considering the substance of the pleadings and any judicially noticed facts." Horsley v. Rivera, 292 F.3d 695, 700 (11th Cir. 2002). To avoid judgment on the pleadings, the complaint is required to contain "enough facts to state a claim to relief that is plausible on its face." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). To survive such a motion, "plaintiffs must do more than merely state legal conclusions; they are required to allege some specific factual bases for those conclusions or face dismissal of their claims." Jackson v. BellSouth Telecomms., 372 F.3d 1250, 1263 (11th Cir. 2004). However, while Twombly retired the oft-cited "no set of facts" standard from Conley v. Gibson, 355 U.S. 41 (1957), the starting point in assessing the sufficiency of a pleading remains Rule 8's requirement that, as far as facts are concerned, a well-pleaded complaint must contain only "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. Proc. 8(a)(2).

B. Plaintiff will not oppose Floyd County's Motion with respect to certain claims

Now that Defendant Floyd County has placed into the record the warrant upon which Armstrong was arrested, it is clear (as discussed below) that the claims arising from Armstrong's wrongful arrest and prosecution sound in "malicious prosecution" as opposed to "false arrest." Therefore, Plaintiff will not contest the Motion with respect to Count I: O.C.G.A. § 51-7-1 (State Law False Arrest) and Count II: 42 U.S.C. §1983 (Federal False Arrest). However, Plaintiff requests that this Court dismiss those claims *without prejudice* so that, if there is a change in the law, or discovery of previously unknown facts to support those claims, Plaintiff may re-assert them.

Moreover, Plaintiff will not oppose Floyd County's Motion with Respect to Count III: O.C.G.A. § 51-7-40 (State Law Malicious Prosecution Tort), and Count VII: Punitive Damages (with respect to Floyd County only).

C. Plaintiff has alleged sufficient facts, and the records contains significant evidence, to support a plausible claim that Floyd County is liable under Section 1983 for the wrongful acts of Garland.

Defendant appears to argue that Plaintiff's claims against Floyd County fail under the Supreme Court's holding in Monell v. New York City Dep't of Soc. Serv., 436 U.S. 658, 694 (1978) and its' progeny. While it is true that a local government entity may not be held liable under § 1983 solely for the acts of its' employees (i.e. through a theory of *respondeat superior*), § 1983 liability may be predicated upon the acts of the *entity.* Pembaur v. City of Cincinnati, 475 U.S. 469, 479 (1986); Monell, 436 U.S. at 694**.** In Pembaur, the Court held that a *single* decision by a person with final decision making policy — someone whose decisions may fairly be said to represent official policy —creates liability on the part of the entity. Pembaur, 475 U.S. at 480 (emphasis supplied).

Defendants seem to misunderstand the Court's holding in Pembaur and misconstrue this circuit's holdings on "official policymaker" liability. In arguing that Floyd County is not liable under § 1983 for Garland's actions as final policy maker for the RFPRA, Defendant advances two arguments. Neither of these arguments diminishes Floyd County's liability under the circumstances.

First, Defendant argues that Plaintiff has not sufficiently pled facts evidencing the relationship between Floyd County and the RFPRA. Essentially, Floyd County is taking the position that RFPRA is a separate entity from the County, such that actions taken by its Executive Director cannot be said to be actions of the County, even though the County created, funds, and oversees the operations of the RFPRA through its Board of Directors. Puzzlingly, this contradicts the position of the City of Rome, which is that RFPRA is not a legal entity capable of being sued. (See Doc. 33-1 at 32-34). Both cannot be true. Either RFPRA is a legal entity with standing to be sued, or it is not, and it is a part of either the County, the City, or both. That is something that will have to be fully developed through discovery.

In the Complaint, Plaintiff alleges that the RFPRA "is an entity that is jointly controlled and funded by Defendant Floyd County, Georgia and Defendant City of Rome, Georgia," and that Garland, as the duly appointed Executive Director, of the RFPRA, was a final policymaker with respect to the RFPRA. (Second Amended Complaint at ¶¶ 8-9).

These factual allegations are supported by materials now in the record. According to local law, Garland was appointed and vested with his power to direct the RFPRA by a board of nine individuals. Code of the City of Rome Georgia § 21-6 (1973) (Doc. 33-3, Exhibit B attached to Defendants City of Rome, Georgia, Rome-Floyd County Recreation Authority, and Richard Garland's Motion to Dismiss at pp. 2). Floyd County has the greatest amount of control over the board, as it appoints the vast majority of these board members; of the nine individual board members, **six** of them are Floyd County appointees and only three of them are City of Rome appointees. Code of the City of Rome Georgia § 21-2 (1973) (Doc. 33-3 at pp.1-2). Appointments to the board are "in the sole discretion of the county…". Floyd County Code § 2-13-2(1)(d) (Doc. 33-4, Exhibit C attached to Defendants City of Rome, Georgia, Rome-Floyd County Recreation Authority, and Richard Garland's Motion to Dismiss at p.3). Further, the purpose of the RFPRA is to "carry on a recreation program for the **city and the county.**" Code of the City of Rome Georgia § 21-3 (1973))(emphasis supplied) (Doc. 33-3 at p. 2). Finally, Garland and his staff's salaries are set by the budget "established and approved" by the board, and this budget must be submitted and approved by both Floyd County and the City of Rome each year. Code of the City of Rome Georgia §§ 21-5 through 21-6 (1973) (Doc. 33-3 at p. 2).

The financing of the RFPRA is particularly indicative of the extent of Floyd County's control over, and involvement with, the RFPRA. As Section 21-7 of the Code of the City of Rome provides: after "the year 1983: Floyd County shall finance the entire…budget" of the RFPRA. (Doc. 33-3 at pp. 2-3). Therefore, at all times relevant to this action, Floyd County was responsible for funding the entire budget for the RFPRA.

Georgia Courts have long recognized a "joint enterprise or adventure" between cities and counties under circumstances closely analogous to the instant case. City of Eatonton v. Few, 189 Ga. App. 687, 689, 377 S.E.2d 504, 506 (1988). In Few, the City of Eatonton was sued for the wrongful death of a decedent in a pool that was owned by the City, but operated by the County pursuant to an agreement between those entities. Id. at 690. The City contended the pool was not a joint enterprise with the County. The Court disagreed, holidng:

> [B]y combining appellant's property and the maintenance labor of its employees with the operation labor of Putnam County's employees, a swimming pool was jointly maintained and operated for the residents of the city and the county. On this evidence, a finding was authorized that the swimming pool was a "joint enterprise," **regardless** of the lack of a profit motive and **notwithstanding** the parties' determination, as between themselves, how the control over the facility would be exercised.

Id. at 690. (emphasis supplied).

Similarly, as set forth above, RFPRA is quite plainly a joint enterprise, created by and funded by City of Rome and Floyd County, with significant control by both City of Rome and Floyd County through their power to appoint the Board of Directors. Plaintiff believes the evidence will further show, as discussed hereinabove, that Floyd County, in particular, exercises significant control over RFPRA's operations through its funding of the RFPRA's entire budget and appointment of six out of the nine board members.

As the Executive Director of a joint enterprise, Garland was a "joint employee" of that enterprise, and when he made final policy decisions on behalf of the RFPRA, he was also making them on behalf of Floyd County and the City of Rome. The Eleventh Circuit has long recognized the concept of "joint employers" in the employment law context. *See* Virgo v. Riviera Beach Associates, Ltd., 30 F.3d 1350, 1359-61 (11th Cir. 1994). "To be considered a joint employer, an entity must exercise sufficient control over the terms and conditions of…employment". Id. at 1360.

"Courts usually make [a joint employer determination] by analyzing: (1) the means and manner of the [employees] work performance; (2) the terms, conditions, or privileges of the [employees] employment; and (3) the [employees] compensation". Kaiser v. Trofholz Technologies, Inc., 2:12-CV-665-MEF, 2013 WL 1294673 (M.D. Ala. Mar. 28, 2013).

Under the Eleventh Circuits "joint employer test", Garland is clearly a joint employee of Floyd County and the City of Rome. They jointly appoint the board that appointed him, he serves the citizens of both Floyd County and the City of Rome in his role, and his compensation is set by a budget submitted to, and approved by, Floyd County and the City of Rome. Further, there is a strong presumption that Floyd County actually exercises *more* control over the RFPRA than does the City of Rome. They appoint more members to the board, and they are the sole entity responsible for funding the RFPRA. Floyd County, therefore, cannot argue they are not liable for Garland's official acts and policymaking decisions under Monell.

At the very least, the question of "joint employers" and "joint control" is a factual determination to be decided by a jury, and is not an appropriate determination to be made in the instant Motion. Virgo, 30 F.3d 1350 at 1360.

Finally, Defendants assert that because Plaintiff alleges Floyd County and the City of Rome could, or should, have exercised oversight over Garland, he could not be the final policymaker for the RFPRA. Defendants point to paragraph 45 of the Second Amended Complaint, in which Armstrong alleges, as an alternate theory of liability, that officials of the City of Rome, Georgia, and Floyd County, Georgia, exercised deliberate indifference with respect to Garland's actions that led to Armstrong's malicious arrest and prosecution. (Defendants' Brief at 32).

As an initial matter, we must be clear that, at the pleading stage, Plaintiff can plead alternate, even inconsistent, theories of liability. There are two routes by which an entity may be held liable under Section 1983 for the acts of its' officials. The first is when an act of a final policymaking official causes the harm. Pembaur v. City of Cincinnati, 475 U.S. 469, 479 (1986); Monell, 436 U.S. at 694. The second is when officials of the entity have exercised deliberate indifference with respect to known or obvious constitutional infirmities, and that deliberate indifference is the driving force behind the constitutional violation. City of Canton, Ohio v. Harris, 489 U.S. 378, 388-89, 109 S. Ct. 1197, 1204-05, 103 L. Ed. 2d 412 (1989).

In this instance, Plaintiff has pled both theories. While Defendants may, after development of the record, be able to show that one or the other theory cannot proceed to the jury, the fact that Plaintiff has pled potentially inconsistent theories at this point does not warrant dismissal. So long as a plaintiff acts in good faith, "[o]ur ordinary Rules recognize that a person may not be sure in advance upon which legal theory she will succeed, and so permit parties to 'set forth two or more statements of a claim or defense alternately or hypothetically,' and to 'state as many separate claims or defenses as the party has regardless of consistency.'" Cleveland v. Policy Mgmt. Sys. Corp., 526 U.S. 795, 805 (1999)(quoting Fed.R.Civ.Proc. 8(e)(2)).

In the instant case, there is certainly to be great debate and discussion of the questions whether RFPRA is a legal entity; if not, whether it is a part of City of Rome, Floyd County, or both; and, if RFPRA is not a legal entity, whether Garland was acting with final policymaking authority with respect to the functions of the RFPRA on behalf of City of Rome and/or Floyd County. Given the great uncertainty that currently exists regarding these questions, and given what Plaintiff currently knows about these entities—i.e. that Garland was the head of RFPRA, an entity whose legal standing is in question, but which was created and is jointly overseen by City of Rome and Floyd County—Plaintiff has acted in good faith in alleging these alternate theories of liability.

Notwithstanding that this language from the complaint represents a properly pled alternate theory of liability, even that language taken at face value does not preclude a finding that Garland was the final policymaker for the RFPRA. Pembaur does not require that the final policymaker causing the harm not be "subject to oversight", it merely requires "that a deliberate choice to follow a course of action is made from among various alternatives by the official … responsible for establishing final policy ***with respect to the subject matter in question***". Pembaur, 475 U.S. at 483. (emphasis supplied). So, if it is true that, as alleged, Garland is the ultimate decisionmaker with respect to the RFPRA, then Garland is Rome and Floyd County's final decisionmaker with respect to "the subject matter in question," that is, the operation of the RFPRA, and Rome and/or Floyd County are therefore liable for his actions.

Pembaur demonstrates the folly in Defendants' argument that a "final decisionmaker" has to be a single individual at the top of the food chain, who acts with no oversight. In Pembaur, the "decision maker" was an "Assistant Prosecutor," who worked under the lead prosecutor. Id. at 471. There were numerous individuals who exercised oversight over him, and his office; however, he was the ultimate decision maker with respect to the harmful action (service of capiases) complained of by the plaintiff, and thus, the municipality was held liable for his decision. Id.

Similarly, at all times relevant to this action, Garland was the Executive Director of the RFPRA. (See Second Amended Complaint at ¶ 9). In fact, the very Ordinance creating the RFPRA makes it quite clear that the Director is vested with complete control over RFPRA functions. Section 21-6 of the Code City of Rome Georgia, provides: "[t]he duties of [the] director shall be to plan, organize, **direct**, and **control** a county-wide recreation program, pursuant to the policy established by the Authority…". (See Doc. 33-3 at 2)(emphasis supplied).

Finally, it should be noted that Plaintiff's alternate theories—one, that Garland was a final policymaker, and two, that the government entities were deliberately indifferent in their oversight of him, are not necessarily inconsistent. A fair inference could be drawn that—although Rome and Floyd County *should have* been overseeing him, they recklessly failed to do so, rendering him the *de facto* final policymaker. "[I]n assessing whether a governmental decision maker is a final policymaker, we look to whether there is an *actual* opportunity for meaningful" review." Holloman ex rel. Holloman v. Harland, 370 F.3d 1252, 1292-93 (11th Cir. 2004) (emphasis supplied) (internal quotations omitted); see also Oladeinde v. City of Birmingham, 230 F.3d 1275, 1295 (11th Cir.2000) (emphasizing that there must be an actual "opportunity" for "meaningful administrative review" before we conclude that a governmental decision maker lacks final policymaking authority); Bowen v. Watkins, 669 F.2d 979 (5th Cir.1982) ("If a higher official has the power to overrule a decision but as a practical matter never does so, the decision maker may represent the effective final authority on the question.").

Defendants have presented no facts tending to show that Garland was *actually* subject to oversight or *significant* review in his final policy decisions for the RFPRA and the very ordinance crating the RFPRA vests Garland with the "duties to…direct and control" the RFPRA. Accordingly, Plaintiff has sufficiently pled facts showing that Garland was the final policymaker on behalf of the RFPRA. As the Executive Director of the RFPRA he made the decisions and instituted the policies on behalf of the Defendants that harmed Plaintiff with no review or oversight from any Defendant. Specifically, Garland was the final decision maker with regard to the treatment and supervision of RFPRA employees. Thus, under Monell, Pembaur, and Eleventh Circuit precedent, Plaintiff has pled sufficient facts to show that Defendant may be held liable for Garland's decisions, which violated Armstrong's Constitutional rights.

D. Plaintiff has stated a § 1983 claim for malicious prosecution

Count IV of Plaintiff's complaint states a claim under 42 U.S.C. §1983 for the violation of Armstrong's rights under the Fourth Amendment to be free from "unreasonable searches and seizures," which includes the right to be free from false arrest and malicious prosecution. To establish a federal malicious prosecution claim under § 1983, Plaintiff must show: (1) the elements of the common law tort of malicious prosecution, and (2) a violation of his Fourth

Amendment right to be free from unreasonable seizures. Kingsland v. City of Miami, 382 F.3d 1220, 1234 (11th Cir. 2004).

A federal malicious prosecution claim under § 1983, incorporates the elements of the common law tort of malicious prosecution. Wood v. Kesler, 323 F.3d 872, 881 (11th Cir. 2003). The common law elements of the tort of malicious prosecution are: (1) a criminal prosecution instituted or continued by the present defendant; (2) with malice and without probable cause; (3) that terminated in the plaintiff accused's favor; and (4) caused damage to the plaintiff accused. Id. at 882.

Paragraphs 40-51 of Plaintiff's Complaint, when read with Plaintiff's Statement of Facts, more than adequately state a claim for malicious prosecution in violation of Armstrong's rights under the Fourth Amendment to be free from unreasonable seizures. Defendant does not argue that Armstrong has not stated a claim evidencing the common law elements of malicious prosecution; instead Defendant argues Armstrong was not "seized" in violation of her Fourth Amendment rights. Armstrong was clearly "seized" under the Fourth Amendment because she was arrested, taken into custody, indicted, and tried for her alleged "crime". (See ¶¶ 33, 41). An arrest is a seizure under the Fourth Amendment. California v. Hodari D., 499 U.S. 621, 626-27, 111 S. Ct. 1547, 1550-51, 113 L. Ed. 2d 690 (1991).

Defendant cites Kingsland v. City of Miami, 382 F.3d 1220, 1234 (11th Cir. 2004), for the proposition that there was no Fourth Amendment "seizure" here because "the normal conditions of pre-trial release do not constitute Fourth Amendment seizure." (County Brief at 13). However, this quote from Kingsland is taken out of context by the County. Under the County's apparent interpretation of Kingsland, no Fourth Amendment claim would ever exist where someone was arrested pursuant to a warrant, indicted and brought to trial based on knowingly false charges, absent "extraordinary conditions of pre-trial release." (Id.) The quoted passage in Kingsland is simply distinguishing a malicious prosecution claim from a false arrest claim in the Fourth Amendment context.

Where there has been a warrantless arrest, with no extraordinary seizure following that arrest, the claim sounds in false arrest, not malicious prosecution. See Kingsland, 382 F.3d at 1234. However, where an individual is arrested pursuant to a warrant—whether forcibly or by surrender—and a criminal prosecution follows, the original arrest constitutes a "seizure" that forms the predicate for a Fourth Amendment malicious prosecution claim. See Whiting v. Traylor, 85 F.3d 581, 584-85 (11th Cir. 1996) ("Whiting also points us to two other possible seizures-his arrest and his surrender after he learned of a warrant. The district court appeared to agree-correctly, we think−that these kinds of physical restraints were seizures that could be the basis of a section 1983 claim.") As the Court in Whiting further explained:

> Labeling [. . .] a section 1983 claim as one for a "malicious prosecution" can be a shorthand way of describing a kind of legitimate section 1983 claim: the kind of claim where the plaintiff, as part of the commencement of a criminal proceeding, has been unlawfully and forcibly restrained in violation of the Fourth Amendment and injuries, due to that seizure, follow as the prosecution goes ahead. [. . .]
>
> So, where a section 1983 plaintiff is seized following the institution of a prosecution (for example, after a warrant has been issued for arrest or after an information has been filed) and he seeks to recover damages for all the elements of the prosecution, he can properly wait until the prosecution terminates in his favor to bring his section 1983 claim which alleges that the seizure was unreasonable. [. . .]
>
> In sum, a section 1983 plaintiff must always base his claim on the violation of a specific federal right. Where the right said to be violated is the Fourth Amendment, the plaintiff must establish a concrete violation of that right. When the seizure is part of the institution of a prosecution (that is, when the Fourth Amendment violation is of the kind making a section 1983 claim based on the violation analogous to the tort of malicious prosecution), the plaintiff may properly wait to sue until the prosecution terminates in his favor. And, also under analogous malicious prosecution principles, injuries caused by the unlawful seizure may include those associated with the prosecution.

Whiting v. Traylor, 85 F.3d 581, 584 (11th Cir. 1996). See also Grider v. City of Auburn, Ala., 618 F.3d 1240, 1258 (11th Cir. 2010) (bar owner arrested after surrender to police, on warrant for bribery, based on false statements by officer who swore out the warrant, possesses valid claim for Section 1983 malicious prosecution claim against officer).

Contrary to Defendant's argument, the "seizure" implicating the Fourth Amendment violation at issue here is the arrest, not the "normal conditions of pretrial release" as alleged by Defendant. The Eleventh Circuit has made clear that this type of "seizure" may form the basis of a § 1983 malicious prosecution claim. "Obtaining an arrest warrant is one of the initial steps of a criminal prosecution…[and] where seizures are pursuant to legal process, we agree…that …the common law tort "most closely analogous"…is that of malicious prosecution". Whiting, 85 F.3d at 585; see also Calero-Colon v. Betancourt-Lebron, 68 F.3d 1, 3 (1st Cir.1995) (section 1983 claim for arrest and prosecution analogous to malicious prosecution tort where arrest pursuant to legal process); Singer v. Fulton County Sheriff, 63 F.3d 110, 115-16 (2d Cir.1995) (holding that a § 1983 plaintiff alleging malicious prosecution must have been seized pursuant to legal process; when the "legal process" is in the form of a warrant, "the arrest itself may constitute the seizure").

Further, even a voluntary surrender by the Plaintiff following the issuance of an arrest warrant constitutes a seizure under the Fourth Amendment. *See* Albright v. Oliver, 510 U.S. 266, 271, 114 S. Ct. 807, 812, 127 L. Ed. 2d 114 (1994)("surrender to the State's show of authority constituted a seizure for purposes of the Fourth Amendment"); Buckner v. Williamson, 3:06-CV-79 (CDL), 2008 WL 2415265 (M.D. Ga. June 12, 2008) ("Plaintiff turned herself in the morning after the warrants issued."); Whiting v. Traylor, 85 F.3d 581, 584-85 (11th Cir. 1996) (voluntary surrender after Plaintiff learned of criminal warrant was a seizure "that could be the basis of a section 1983 claim."); Cummisky v. Mines, 248 F. App'x 962, 965 (10th Cir. 2007) (rejecting lower court's holding that "…Plaintiff's self-surrender [was] insufficient to give rise to…Fourth Amendment seizure").

As Defendant admits, Armstrong was arrested pursuant to a warrant. (See Defendant's Brief in Support [Doc. 35-1] at p. 11 and Exhibit A to Defendant's Answer [Doc.32-1]). An arrest pursuant to a valid warrant constitutes a seizure for purposes of the Fourth Amendment. Whiting at 584-85. Further, "[w]hen the seizure is part of the institution of a prosecution…injuries caused by the unlawful seizure may include those associated with the prosecution". Id. at 586. Accordingly, Armstrong was clearly seized in violation of her Fourth Amendment rights, has stated a § 1983 malicious prosecution claim, and may recover damages for all injuries stemming from her arrest and prosecution.

IV. CONCLUSION

For these reasons, Armstrong respectfully submits that this Court must DENY in full Floyd County's Motion with Respect to Counts III (state law malicious prosecution) and IV (Section 1983 malicious prosecution); and dismiss without prejudice Counts I (state law false arrest) and II (Section 1983 false arrest).

Respectfully submitted this 11th day of June, 2013.

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Local Rule 7.1D Certification

By signature below, counsel certifies that the foregoing document was prepared in Book Antiqua, 13-point font in compliance with Local Rule 5.1B.

Certificate of Service

The undersigned certifies the foregoing document was electronically filed on June 11, 2013 with the Clerk of Court using the CM/ECF system, which will automatically send e-mail notification of such filing to the following attorneys of record:

/s/ James Radford
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